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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,190	05/15/2001	Raymond Clarke	13282-1	9370

7590

06/23/2003

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225 South Lake Avenue, Suite 900
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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

10

DATE MAILED: 06/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/858190

Applicant(s)

CLARKE

Examiner

S. WEINSTEIN

Group Art Unit

1761

mk-10
—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 2/19/03
- ☐ Responsive to communication(s) filed on _____
 - ☐ This action is **FINAL**.
 - ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 1-20
- 1-9
- 10-20
- ☒ Claim(s) _____ is/are pending in the application.
 - Of the above claim(s) _____ is/are withdrawn from consideration.
 - ☐ Claim(s) _____ is/are allowed.
 - ☒ Claim(s) _____ is/are rejected.
 - ☐ Claim(s) _____ is/are objected to.
 - ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892 ✓
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Applicant's election filed February 19, 2003 of claims 10-20, without traverse, has been received. Claims 1-9 are withdrawn from further consideration as being drawn to a non-elected invention.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (4,842,875) in view of Antoon (5,045,331) further in view of Badran et al (3,450,544), Badran (3,450.52) and DeMoor (6,013,293).

Anderson as further evidenced by Antoon, Badran et al, Badran and De Moor, disclose it is notoriously conventional to packaged produce including bananas in sealed containers wherein the produce including bananas can be at different stages of ripeness and wherein the sealed container has been provided with gas permeability ranges to allow the produce to be stored for longer periods of time than if they were not stored in the gas permeable containers. The art taken as a whole teaches that the gas permeability ranges for the produce is selected as a function of respiration rates of the produce, which in turn is a function of type of produce, weight, film permeability, etc. That is, the art taken as a whole teaches that by controlling the package atmosphere, one controls produce respiration and the various variables can be manipulated and can vary with the produce to be packaged. Claim 10 and the dependent claims recite

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particular gas permeabilities for the specific packaged produce, which are bananas. The art taken as a whole clearly directs one to manipulate the various variables detailed above to achieve optimum results and one of ordinary skill in the art would therefore ^{be} fairly led through routine experimentation to determine the various permeability ranges for bananas at any state of ripeness if in ^{deed} the permeabilities are not already inherent in the art taken as a whole. As for the use of a ^{coated} ~~coating~~ microporous film, the use of coated, microporous films for gas permeable produce packages, which is applicant's intended use, is shown to have been obvious by De Moor.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

S.L. Weinstein/dh
May 8, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER (761